

**Snohomish County**  
**Charter Review Commission**

Mill Creek City Hall, Council Chambers 15728 Main St, Mill Creek, WA 98012 Wednesday,  
March 23, 2016  
7:00PM - 9:00PM  
AGENDA

7:00 p.m. Call to Order

**Flag Salute**

**Roll Call**

**Agenda Order**

**Public Comments (7:10 p.m.)**

**Report from Chair**

**Business Items**

1. Charter Amendment Study Items
  1. Proposal 2016-12 Lower Age for Holding County Office from 21 to 18
  2. Proposal 2016-13 Reduce Residency Requirement for Holding County Office
  3. Proposal 2016-27 Require Sunset Provisions in Ordinances
  4. Proposal 2016-03 Abstentions by County Council Members

**Old Business**

**New Business**

9:00 p.m. Adjournment

Next Meeting March 30 - Edmonds Public Safety Complex

Agenda Topics

Charter Amendment Proposal 14 - Enlarge Council from 5 to 7 Members  
Charter Amendment Proposal 7 - Non-Partisan Elections  
Charter Amendment Proposal 16 - Eliminate Term Limits

[NOTE: Times shown on Agenda are approximate]

Documents: [2016\\_0323 AGENDA.PDF](#)

2. Charter Review Commission Extended Agenda - March 23: Mill Creek City Hall  
**March 23: Mill Creek City Hall**

Study Items

1. Proposal 2016-03 Abstentions by County Council Members
2. Proposal 2016-12 Lower Age for Holding County Office from 21 to 18
3. Proposal 2016-13 Reduce Residency Requirement for Holding County Office
4. Proposal 2016-03 Require Sunset Provisions in Ordinances

3. 03/23/2016 - Snohomish County Charter Review Commission Abstentions

SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-18	
<b>SUBJECT TITLE:</b> Abstentions by County Council Members	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal

2016-15 Abstentions by County Council Members. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft

proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, Carolyn Weikel suggested the Commission consider requiring the County Council to vote on all matters unless there was a conflict of interest. On March 2, the Commission moved to have further discussion on the topic.

Every year since 2004, there are about 1-2 times a year a council member abstains on a vote for a motion or an ordinance.

To require a council member to vote, the Commission could amend either Charter sections 2.50 or 2.60 to include language about voting.

Question for Discussion:

Does the commission wish to require councilmembers to vote on all questions presented to the Council?

**BACKGROUND:**

The Snohomish County Code requires any council action to pass with three affirmative votes, unless a higher threshold is required by the charter or state law. The council uses Roberts Rules of Order as a guideline for how meetings proceed.

Roberts Rules of Order states "Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote." In California, courts have expressed the position "that the duty of members of a city council to vote and that they ought not "by inaction prevent action by the board."" (*Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 520.), and the duty to vote is present if the member is present. (*Dry Creek Valley Assn., Inc. v. Bd. of Supervisors* (1977) 67 Cal.App.3d 839, 844.)

The effect of abstentions on the ordinance, motion, or resolution depends on the type of vote. An abstention can have the effect of supporting the majority's position, undermining the majority's position, or have no effect.<sup>1</sup>

Snohomish County Code 2.50 describes when council members should disclose conflicts of interest.

2.50.040 states "Any county elected or appointed official shall remove him or herself from hearing any quasi-judicial matter where, in the judgment of that official, his or her impartiality might be reasonably questioned."

Use of Abstentions

Since 2004, a member of the council abstained from voting about once or twice per year as seen in Table

1.<sup>2</sup> Most abstentions occurred during the vote on motions, rather than ordinances, which amend county code.<sup>3</sup>

Table 1 - Abstentions by Councilmembers

Year	Motion	Ordinance	Other
2004	1	0	1
2005	1	0	0
2006	2	0	1
2007	3	0	0
2008	2	0	1
2009	3	0	0
2010	0	0	0
2011	0	0	0
2012	0	0	0
2013	0	0	4
2014	0	5	1

<sup>1</sup> For examples see <https://WWW.JURASSICPARLIAMENT.COM/IF-YOU-ABSTAIN-FROM-A-VOTE-WHAT-happens/>.

<sup>2</sup> This table is based on the published Council Voting Records available at <http://SNOHOMISHCOUNTYWA.GOV/936/COUNCIL-VOTING-RECORDS>. In at least one instance in 2014, the voting records do not appear to match the video proceedings of the Council. Ord 14-089 is listed as having four abstentions, but the video recording shows that the motion died for a lack of a second. [http://SNOHOMISH.GRANICUS.COM/MEDIA/PLAYER.PHP?VIEW\\_ID=2&CLIP\\_ID=4230&META\\_ID=261600](http://SNOHOMISH.GRANICUS.COM/MEDIA/PLAYER.PHP?VIEW_ID=2&CLIP_ID=4230&META_ID=261600)

<sup>3</sup> The staff did not research whether a member explained their vote to abstain.

Table 1 - Abstentions by Councilmembers

Year	Motion	Ordinance	Other
2015	3	1	0

None of the other home rule counties contain a requirement in their charter for a member of the council to vote on every question.

If the Commission wishes to add language to the Charter, possible language may be "Every member of the council present shall vote on every question except when required to refrain from voting by state law."

Question for Discussion:

Does the commission wish to require councilmembers to vote on all questions presented to the Council?

**ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

**Exhibit 1**  
**Snohomish County Charter**

**Section 2.50 Organization**

The county council shall annually elect one of its members as chair and one as vice-chair who shall act in the absence of the chair. The council shall be responsible for its own organization, the rules of conduct of its business and for the employment and supervision of such persons as it deems necessary to assist it in the performance of its duties. A majority of the council shall constitute a quorum at all meetings.

Council action shall require at least a majority of the entire council except as provided by this charter or ordinance.

**Section 2.60 Rules of Procedure**

The county council shall enact by ordinance rules of procedure governing the time, place and conduct of its meetings and hearings and the introduction, publication, consideration and adoption of ordinances. The rules of procedure shall provide for public access to agendas, minutes and voting records of individual county council members. The rules of procedure shall also provide for an opportunity for public comment during any meeting of the county council. All meetings shall be open to the public except to the extent executive sessions are authorized by state law.

Documents: [2016-18 ABSTENTIONS.PDF](#)

4. 03/23/2016 - Snohomish County Charter Review Commission Agenda

SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-15	
<b>SUBJECT TITLE:</b> Lower Age for Holding County Office from 21 to 18	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter 2) Qualifications for Elective Office

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-12, Lower Age for Holding County Office from 21 to 18. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, the Commission decided to move forward with further analysis and discussion of Charter Amendment Proposal 2016-12, Lower Age for Holding County Office from 21 to 18. The proposal was initially proposed by Vice Chair Terwilliger.

A question was raised whether the requirements that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties. The Commission's attorney's short answer to this question is, "no, generally speaking, the actions of home rule charter counties are valid so long as they do not contravene a statute or other provision of the state constitution."

Lowering the age requirement to hold office would allow more people to run or be appointed to public office.

Question for Discussion:

Does the Commission wish to change the age for appointment or election for Snohomish County offices?

**BACKGROUND:**

A restriction of office holders in the Snohomish County Charter is that individuals must attain the age of 21 to serve. Supporters of reducing the age to 18 argue these provisions discriminate against younger politicians, and that a reduction would unleash a new wave of youth activism.<sup>1</sup> In addition, supporters of removing age requirements for holding office rely on many of the same rationals for lowering the voting age to 18.2

At least one scholar argues that minimum age qualifications lead to a "more egalitarian environment for female political candidates." Lauren Biksacky argues that "the Framers designed the minimum age qualifications to grow a republican society open to meritorious people of humble origins." Since women traditionally enter elected politics later in life, Biksacky concludes that age qualifications "affirm the political equality of women political candidates."<sup>3</sup>

**State Law:**

Eligibility for Election

The state law regarding eligibility for office is contained in RCW 42.04.020.

"no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision."

In order to be eligible as a voter, Article VI of the state Constitution states that all persons of the age of eighteen years of age and who lived in the precinct thirty days preceding the election are entitled to vote.

These provisions, taken together, require that candidates for elective office be at least 18 years old and have resided in the state, county, and precinct for at least 30 days. These requirements apply as a matter of law to counties whose charters do not specify additional limitations on holding office. Currently, the Snohomish County Charter contains three limitations, an office holder must be 21, live in the county for three years, and not served more than three consecutive full terms.

Powers under a Home Rule Charter

Article XI, Section 4 of the state constitution allows counties to "frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state." The section goes on to state that home rule charters may "provide for such county officers as may

<sup>1</sup> Osita Nwanevu. 2014. "The Right to Run: If you can vote, you should be able to run for public office—any office." *Slate Magazine*.

[HTTP://WWW.SLATE.COM/ARTICLES/NEWS\\_AND\\_POLITICS/POLITICS/2014/10/AGE\\_OF\\_CANDIDACY\\_LAWS\\_SHOULD\\_BE\\_ABOLISHED\\_WHY\\_18\\_YEAR\\_OLDS\\_SHOULD\\_BE\\_ABLE.HTML](http://www.slate.com/articles/news_and_politics/politics/2014/10/age_of_candidacy_laws_should_be_abolished_why_18_year_old_should_be_able.html)

<sup>2</sup> "In our country, eighteen- to thirty-four-year-olds can buy cigarettes, donate organs, play the lottery, drive cars, fly airplanes, shoot guns, start businesses, own homes, sign contracts, have consensual sex, get married, get divorced, have children, have abortions, join the military, serve as jurors, and be tried in court as full adults." John Seery. 2012. *Too Young to Run: A Proposal for an Age Amendment to the U.S. Constitution*.

<sup>3</sup> Lauren Biksacky. 2014. "Favorite Sons (and Daughters): The Constitution's Gender-Egalitarian Minimum Age Qualifications." *Student Scholarship Papers*. [HTTP://DIGITALCOMMONS.LAW.YALE.EDU/STUDENT\\_PAPERS/129/](http://digitalcommons.law.yale.edu/student_papers/129/)

be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation."

In *State ex rel. Griffiths v. Superior Court* (1934), the Washington Supreme Court upheld a City of Seattle charter provision that barred Seattle City Council members from holding and other federal, state, county, or municipal office. The challenger argued, among other things, that the city charter provision was invalid because it conflicted with a state constitutional provision that authorized the adoption of city charters under general laws and a statute that listed only citizenship and status as an elector as qualifications for election to a city council. The Court concluded that the statute "fixes a **minimum of qualification** beyond which its political subdivisions may not go" and does not say that other qualifications may not be required (emphasis added).

The conclusion in *Griffiths* was used as a basis of multiple opinions from the Attorney General regarding the abilities of cities, towns, and counties to impose term limits<sup>1</sup> and regarding whether a state legislator must resign before they could hold municipal office.<sup>1</sup>

**Conclusions:**

The Commission is under no obligation under state law to change the Charter to allow 18, 19, or 20 year olds from holding public office.

If the Commission moves forward with amending the Charter, 18-20 year olds could run for public office, or be appointed to public office.

**ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

Documents: [2016-16 AGE.PDF](#)

5. 03/23/2016 - Snohomish County Charter Review Commission Residency

SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-16	
<b>SUBJECT TITLE:</b> Reduce Residency Requirement for Holding County Office	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter 1) Qualifications for Elective Office

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-13 Reduce Residency requirement for Holding County Office. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, the Commission decided to move forward with further analysis and discussion of Charter Amendment Proposal 2016-13 Reduce Residency requirement for Holding County Office. The proposal was initially proposed by Vice Chair Terwilliger.

The Charter requires all office holders to be a resident of the County for three years "immediately prior to filing for or appointment to office."

A question was raised whether the requirements that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional. The Commission's attorney's short answer to this question is that numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient government interests can be identified to support them.

Question for Discussion:

Does the Commission wish to change the residency requirement for appointment or election for Snohomish County offices?

**BACKGROUND:**

An abbreviated legal analysis on the question posed by Vice Chair Terwilliger is attached to this memo.

Supporters of residency requirements argues that office holders must be immersed in their community to represent it. Other arguments include the need for voters to have adequate time to assess the candidates, and prevent carpet bagging.<sup>1</sup>

<sup>1</sup> Michael J. Pitts. 2016. "Against Residency Requirements." *University of Chicago Legal Forum*.  
: [HTTP://CHICAGOUBOUND.UCHICAGO.EDU/UCLF/VOL2015/ISS1/11](http://chicagounbound.uchicago.edu/uclf/vol2015/iss1/11).

Opponents of residency requirements generally argue that residency requirements reduce the choice of voters. The U.S. Constitution does not contain district residency requirements for serving as a member of Congress.

King County requires all office holders to be 21.

#### ALTERNATIVES:

The Commission add this item to a subsequent agenda for discussion.

#### Exhibit 1

#### County Charter

#### Section 4.30 Qualifications – Limitations

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty - one, a county resident for the three years immediately prior to filing for or appointment to office, and a registered voter of the count No person shall be eligible to be elected to more than three consecutive terms for any office For the purposes of this section, different positions on the county council shall not be considered different offices.

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March 22, 2016

Snohomish County Charter Review Commission  
Attention: Chris Roberts  
3000 Rockefeller Avenue, MS 507  
Everett, Washington 98201

Re: Qualifications for elective office

Dear Members of the Commission:

You have asked through staff for an expedited response to two questions concerning the qualifications for elective office contained in the current text of Snohomish County Charter Section 4.30. You have asked:

- (1) Whether the requirement that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties; and
- (2) Whether the requirement that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional.

Short answers

Short answers

For the reasons stated below, your first question can be answered in the negative. In answer to your second question, numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient governmental interests can be identified to support them. Additional analysis can be provided if needed by the Commission.

Analysis

Charter Section 4.30 currently states, in its entirety:

#### Section 4.30 Qualifications - Limitations

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

The age and residency requirements of this section exceed those of most Washington charter counties. Charter counties other than King County require, either explicitly or through operation of law, that candidates for elective office be at least 18 years old. King County requires that candidates be 21 by the time of appointment or election. King County Charter, Sec. 630.1 Our research has not revealed any other Washington charter county that imposes a three-year durational residency requirement for elective office.

Your request presents the threshold issue of whether state law dictates the qualifications for elective offices in counties that have adopted home rule charters. Article XI, Section 4, of the state Constitution provides for the creation of charter counties. That section states, in part, that "[a]ny county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state ...." (Emphasis added.) Eligibility for elective office is broadly addressed in RCW 42.04.020:

#### Eligibility to hold office.

No person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.

The meaning of "elector" is provided by Article VI, Section 1. Under that section, "all persons of the age of eighteen years or older" who are citizens and "have lived in the state, county, and precinct for 30 days immediately preceding the election at which they offer to vote" are entitled to vote unless disqualified under Article VI, Section 3, which disqualifies certain persons who have been convicted of "infamous" crimes or declared incompetent.

These provisions, taken together, require that candidates for elective office be at least 18 years old and have resided in the state, county, and precinct for at least 30 days. These requirements apply as a matter of law to counties whose charters do not specify age or residency requirements. In *State ex rel. Griffiths v. Superior Court*, 177 Wash. 619, 33 P.2d 94 (1934), the Washington Supreme Court upheld a City of Seattle charter provision that barred Seattle City Council members from holding any other federal, state, county, or municipal office. The challenger argued, among other things, that the city charter provision was invalid

because it conflicted with a state constitutional provision that authorized the adoption of city charters under general laws and a statute that listed only citizenship and status as an elector as qualifications for election to a city council. The Court stated:

The only attack made by the relator upon the charter is that it purports to superadd certain qualifications necessary for elective officers to those imposed by the legislature. Assuming, for the sake of argument, that the language of the charter is to be interpreted as, in fact, imposing superadded qualifications, it does not follow that it contravenes the statute. Had the framers of the charter sought to lessen the requirements demanded by the statute, a different question would be presented, for then the charter would be in direct conflict with the statute. But that is not the case here. Section 9929 merely provides that no person shall be competent to hold office unless he possesses certain qualifications. It does not say that no other requirements shall be prescribed, nor does it say that the political subdivision therein named may not impose restrictions not inconsistent with the statute.

Id. at 623-24. In short, the Court held that the statute "fixes a minimum of qualification beyond which its political subdivisions may not go" and does not say that other qualifications may not be required. [d. This analysis was subsequently adopted by the Attorney General in responding to an inquiry regarding the ability of cities, towns and counties to impose term limits. AGO 1991 No. 22. Compare, *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998) (constitutional qualifications for state office exclusive).

This conclusion, that additional qualifications can be imposed by county charter, is consistent with basic principles that govern the activities of Washington charter counties. Generally speaking, the actions of home rule charter counties created under Article XI, Section 4, are valid so long as they do not contravene a statute or other provision of the state constitution. *King County Council v. Public Disclosure Comm'n*, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980). Charter counties thus "have legislative powers analogous to those of the state," except as expressly or impliedly limited by state law. AGO 2003 No. 11 at 3 (citing *Winkenwerder v. City of Yakima*, 52 Wn.2d 617,

622, 328 P.2d 873 (1958). See also *State ex rel. Carrol v. King County*, 78 Wn.2d 452, 474 P.2d 877 (1970) (upholding local election schedule).

It therefore appears, in answer to your first question, that the requirement of Charter Sec. 4.30 that officers be over the age of 21 at the time of appointment or election to office does not conflict with state laws providing for establishment of charter counties.

Your second question implicates a variety of state and federal constitutional principles that bear on the exercise of individual rights, including the rights of suffrage, equal protection of the laws, and right to travel. Because you have not asked for a comprehensive analysis of potential constitutional challenges, the following comments

should be regarded as summary in nature. Additional or more focused analysis can be provided if needed by the Commission.

In *Lawrence v. Issaquah*, 84 Wn.2d 146, 524 P.2d 1347 (1974), the Washington Supreme Court heard an appeal seeking to compel the City of Issaquah, along with its Mayor and City Council, to seat the plaintiff as a Councilman after having been elected to that office. The City Council had resolved by oral motion that the plaintiff was ineligible for office for failure to comply with the one-year durational residency requirement applicable to noncharter code cities under RCW 35A.12.030. The appellant argued that the requirement, which called for residence in the city "for a period of at least one year next preceding his election," was unconstitutional for violation of his right to equal protection, in that it affords the right to hold office to others who have resided in the City for one year or more, and of his right to travel.

The court in *Lawrence* had little difficulty rejecting the appeal. Citing *Sorenson v. Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972), and *Dunn v. Blumstein*, 405 U.S.

330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), two cases that invalidated requirements imposed on the right to vote, for the proposition that "a restriction placed upon a qualification for state office was unconstitutional, unless there was a compelling state interest" to support it, the majority held that the statutory one-year residency requirement was justified by a compelling state interest. That interest, articulated by the trial judge in *Chimento v. Stark*, 353 F. Supp. 1211 (D.N.H. 1973), *aff'd*, 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973), was quoted by the Court:

We conclude that the residency requirement of the New Hampshire Constitution does promote legitimate state interests. It ensures that the chief executive officer of New Hampshire is exposed to the problems, needs, and desires of the people whom he is to govern, and it also gives the people of New Hampshire a chance to observe him and gain firsthand knowledge about his habits and character. While the length of the residency requirement may approach the constitutional limit, it is not unreasonable in relation to its objective. It does not seriously impair the participation of the plaintiff in the election process and has only a negligible impact on the voters' right to have a meaningful choice of candidates for Governor. If the residency requirement for Governor is to be eliminated, it should be accomplished by the voters through the constitutional amending process. We hold, therefore, that Part Second, Article 42, of the New Hampshire Constitution is not violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

*Lawrence*, *supra* at 150 (emphasis in original). *Chimento* involved a seven-year residency requirement for the office of Governor. Another New Hampshire case upheld a seven-year residency requirement for the office of state senator against a challenge premised on rights of both candidates and voters, *Sununu v. Stark*, 383 F. Supp. 1287

(D.N.H. 1974), *aff'd*, 420 U.S. 958, 95 S.Ct. 1346, 43 L.Ed.2d 435 (1975). Both cases were summarily affirmed by the United States Supreme Court.

In reaching its decision the Supreme Court in *Lawrence* noted that residency requirements do not lend themselves to a one size fits all approach:

We recognize from this holding that a residential requirement must be reasonable and that the same residential requirement for the office of city councilman of Issaquah as for the office of Governor or in New Hampshire would be unreasonable and would exceed constitutional limitations. We are satisfied, however, that the residential requirement of 1 year for the office of city councilman, as in the instant case, is not an unreasonable limitation to fulfill the compelling state interest of affording the candidate for that office the opportunity to be exposed to the needs and problems of the people of Issaquah, and at the same time to afford the people of Issaquah the opportunity to observe the candidate for city council and gain firsthand knowledge about his or her habits and character.

*Lawrence*, *supra* at 150.

The Washington Court of Appeals, Division Two, considered a challenge to the five-year durational residency requirement for the election of freeholders contained in Article XI, Section 4, of the state Constitution in *Fischnaller v. Thurston County*, 21 Wn. App. 280, 584 P.2d 483 (1978), review denied 91 Wn.2d 1013 (1979). That court applied the compelling state interest test "[s]olely for the purpose of this decision," but noted with approval that the concurring opinion in *Lawrence* had suggested that "the true constitutional test is not that of a compelling state interest, but rather of legitimate state interest." *Id.* at 287 (emphasis in original). The court found a compelling state interest based on the "highly significant" and independent responsibilities exercised by freeholders in fashioning the fundamental framework for a local government. The court also distinguished freeholders from other local officials whom it described as selected within an existing framework of established laws and procedures, "surrounded by legal checks and balances," and "having the aid of experienced staff people." *Id.* at 289.

On the other hand, there have been numerous cases in other jurisdictions where durational residency requirements for public office have not fared as well. This has generally followed in the wake of the seminal United States Supreme Court decision in *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct.2d 1322, 22 L.Ed.2d 600 (1969), which held that a one-year waiting period for public assistance denied equal protection because the reasons offered to justify it were either impermissible or failed to demonstrate a compelling state interest. *Id.* at 627. Since durational residency requirements inherently operate against persons who have recently exercised their right to travel, there have been challenges in other contexts as well, including public employment, bar admission, divorce, tuition fee differentials, publicly funded medical care, voter registration, and entitlement to Alaska's permanent fund dividends. See, e.g., *Eggert v. Seattle*, 81 Wn.2d 840, 505 P.2d 801 (1973) (voiding durational residency requirement for city employment).

See generally 65 A.L.R. 3d 1048, 1053; Kalen, *Durational Residency Requirements and the Equal Protection Clause: Zobel v. Williams*, 25 Wash. U. J. Urb. & Contemp. L. 329 at 342-45.

As illustrated by *Lawrence* and *Fischnaller*, the outcomes of these cases depend on how the courts approach the standard of review and the reasons offered to justify the restrictions, and have varied widely. There have even been different results in federal and state courts on the same facts. In *Robertson v. Bartels*, 890 F. Supp.2d 519 (D.N.J. 2012), a federal District Court rejected as erroneous and an unlawful collateral attack a New Jersey Supreme Court decision that purported to uphold a one-year in district residency requirement for election to the state legislature despite the longstanding existence of a federal injunction barring its enforcement. In doing so the District Court emphasized the individualized factual analysis required in this area:

Indeed, "[i]n assessing challenges to state election laws that restrict access to the ballot, [the Supreme Court] has not formulated a litmus-paper test for separating those restrictions that are valid from those that are invalid under the Equal Protection Clause." *Clements v. Fashing*, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) (quotation omitted). "Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions." *Id.* (citations omitted). Accordingly, "[t]he inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity." *Id.* at 964 (quotation omitted).

*Id.* at 527. The court went on to find that the reasons offered in support of the restrictions were unpersuasive, and distinguished the decisions upholding the seven-year restrictions in *Chimento* and *Sununu* as applicable only to high office, which it described as "the highest elective offices in the State of New Hampshire." *Id.* at 523.

In *Pelozo v. Freas*, 871 P.2d 687 (Alaska 1994), the Alaska Supreme Court invalidated a three-year residency requirement for election to the Kenai City Council. Although the case was decided using Alaska's "sliding scale" equal protection standard, which is typically more demanding than the rational basis standard applied in equal protection cases that do not employ strict scrutiny, the court noted that for local governments the cases seem to draw a line at one year:

We are inclined to consider problematic any period longer than one year. Other jurisdictions have generally viewed with skepticism duration residency requirements of longer than one year for local elections.

*Id.* at n. 8 (citations omitted).<sup>2</sup> The court went on to illustrate how cases in this area can boil down to a judgment call:

We are not persuaded that ensuring familiarity between the electorate and candidates in a local election is sufficiently compelling to outweigh the significant burden the charter provision places on the fundamental rights at stake. And the longer the candidate has been in the community, the weaker the means-end fit becomes. Three years is an unacceptably long time to burden the right of local voters to make their own decisions.

*Id.* at 689.

I trust the foregoing will be of assistance.

Sincerely,

THR

<sup>2</sup> It has also been said that cases in this area have trended toward invalidation of requirements that apply at the local (as opposed to state) level particularly when adopted by local law; toward upholding durational requirements of one year or less; and toward disapproval of some of the traditionally substantially longer periods required." 65 A.L.R. Jd 1048 at 1054-55, 1061.

Documents: 2016-17 RESIDENCY.PDF

## 6. 03/23/2016 - Snohomish County Charter Review Commission Agenda List Of Charter Amendment Proposals

Number	Topic	Submitter	Charter Provision Addressed (if known)	Commission Action	Date	Date of Full Discussion	Ballot Proposal
2016-01	Move Animal Control to Sheriff's Office	Donald Murray	New Provision	Refer proposal to County Council	2/17/2016		
2016-02	Revisions to Districting Timeline and Procedures	County Auditor	Sections 4.50, 4.60 and 4.70.	Move for further discussion	2/17/2016	3/16/2016	
2016-03	Abstentions by County Council Members	Carolyn Weikel	Section 2.50 and 2.60	Move for further discussion	2/17/2016	3/23/2016	
2016-04	Adding Office of Ombudsman to Charter	Commissioner Koster	New Provision	Move for further discussion	2/17/2016	3/16/2016	
2016-05	Evaluate Process for Addressing Whistleblower Complaints	Commissioner Koster	Section 9.30	Move for further discussion	3/2/2016		
2016-06	Evaluate Process for Addressing Ethics Complaints	Commissioner Koster	Section 9.30	Move for further discussion	3/2/2016		
2016-07	Non-Partisan Elections for all County Offices	Commissioner O'Donnell	Section 4.15	Move for further discussion	3/2/2016	3/30/2016	
2016-08	Schedule of County Council Meetings	Commissioner Valentine	Section 2.60	Move for further discussion	3/16/2016	4/6/2016	
2016-09	Move Union Negotiations to County Council	Commissioner Terwilliger	Sections 2.20 and 3.20	Move for further discussion	3/2/2016	4/6/2016	
2016-10	Confirmation of Department Heads	Commissioner Terwilliger	Section 2.2	Move for further discussion	3/2/2016	4/6/2016	
2016-11	Clarify Duties and Powers of County Officers	Commissioner Terwilliger	Sections 3.20 and 3.110	Move for further discussion	3/2/2016	4/20/2016	
2016-12	Lower Age for Holding County Office from 21 to 18	Commissioner Terwilliger	Section 4.30	Move for further discussion	3/2/2016	3/23/2016	
2016-13	Reduce Residency Requirement for Holding County Office	Commissioner Terwilliger	Section 4.30	Move for further discussion	3/2/2016	3/23/2016	
2016-14	Enlarge Council from 5 to 7 Members	Commissioner Terwilliger	Section 2.30 (4.60, 4.70)	Move for further discussion	2/17/2016	3/30/2016	
2016-15	Eliminate Office of Performance Auditor	Commissioner Terwilliger	Section 2.150	Move for further discussion	2/17/2016	3/16/2016	
2016-16	Eliminate Term Limits	Commissioner Terwilliger	Section 4.30	Move for further discussion	3/2/2016	3/30/2016	
2016-17	Allow County Council to Declare an Elected Official's Position Vacant	Commissioner Terwilliger	Section 4.80	Withdrawn	3/2/2016		
2016-18	Change Date of Submission of Executive's Budget from October 1 to September 1	Commissioner Terwilliger	Section 6.20	Move for further discussion	3/2/2016	4/6/2016	
2016-19	Update Charter Language on Nondiscrimination	Commissioner Terwilliger	Section 9.05	Move for further discussion	3/2/2016		
2016-20	Update Charter Language on Transitional Provisions	Commissioner Terwilliger	Article 11	Move for further discussion	3/2/2016		
2016-21	Review Charter for Glaring Errors	Commissioner Matthews		Move for further discussion	3/2/2016		
2016-22	Require Biennial Budgets	Commissioner Koster	Section 6.05	Move for further discussion	2/17/2016	4/6/2016	
2016-23	Update Charter to use Gender-Neutral Terms	Commissioner Fior		Move for further discussion	3/2/2016	3/16/2016	
2016-24	Evaluate Governance Structure for Paine Field	Chair Gregerson	New Provision				
2016-25	Explore Concepts for Additional Representation in Unincorporated Areas	Commissioner Kelly	New Provision	Move for further discussion - Subcommittee Formed	3/16/2016	4/25/2016	
2016-26	Require Council to Repeal Ordinances with Adoption of New Ordinance	Commissioner Roulstone	Sections 2.110-2.2120	Withdrawn	3/2/2016		
2016-27	Require Sunset Provisions in Ordinances	Commissioner Terwilliger	Sections 2.110-2.2120	Move for further discussion	3/2/2016	3/23/2016	
2016-28	Make all Elected County Offices Partisan	Commissioner Barton	Section 4.15	Failed to garner five votes	3/2/2016		
2016-29	Public Financing for County Offices	Commissioner Lias	New Provision				
2016-30	Evaluate Status of Human Rights Commission	Commissioner Lias	New Provision				
2016-31	Require Appeals of Hearing Examiner to go to Superior Court	Commissioner Lias	New Provision				

7. 03/23/2016 - Snohomish County Charter Review Commission Qualifications

THOMAS HERRICK ROBERTSON  
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(206) 718-8230  
THRlaw@gmail.com

March 22, 2016

Snohomish County Charter Review Commission  
Attention: Chris Roberts  
3000 Rockefeller Avenue, MIS 507  
Everett, Washington 98201

Re: Qualifications for elective office

Dear Members of the Commission:

You have asked through staff for an expedited response to two questions concerning the qualifications for elective office contained in the current text of Snohomish County Charter Section 4.30. You have asked:

- (1) Whether the requirement that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties; and
- (2) Whether the requirement that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional.

Short answers

For the reasons stated below, your first question can be answered in the negative. In answer to your second question, numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient governmental interests can be identified to support them. Additional analysis can be provided if needed by the Commission.

Analysis

Charter Section 4.30 currently states, in its entirety:

**Section 4.30 Qualifications - Limitations**

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the

three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

The age and residency requirements of this section exceed those of most Washington charter counties. Charter counties other than King County require, either explicitly or through operation of law, that candidates for elective office be at least 18 years old. King County requires that candidates be 21 by the time of appointment or election. King County Charter, Sec. 630. Our research has not revealed any other Washington charter county that imposes a three-year durational residency requirement for elective office.

Your request presents the threshold issue of whether state law dictates the qualifications for elective offices in counties that have adopted home rule charters. Article XI, Section 4, of the state Constitution provides for the creation of charter counties. That section states, in part, that "[a]ny county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state ...." (Emphasis added.) Eligibility for elective office is broadly addressed in RCW 42.04.020:

**Eligibility to hold office.**

That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.

The meaning of "elector" is provided by Article VI, Section 1. Under that section, "all persons of the age of eighteen years or older" who are citizens and "have lived in the state, county, and precinct for 30 days immediately preceding the election at which they offer to vote" are entitled to vote unless disqualified under Article VI, Section 3, which disqualifies certain persons who have been convicted of "infamous" crimes or declared incompetent.

These provisions, taken together, require that candidates for elective office be at least 18 years old and have resided in the state, county, and precinct for at least 30 days. These requirements apply as a matter of law to counties whose charters do not specify age or residency requirements.

In *State ex rel. Griffiths v. Superior Court*, 177 Wash. 619, 33 P.2d 94 (1934), the Washington Supreme Court upheld a City of Seattle charter provision that barred Seattle City Council members from holding any other federal, state, county, or municipal office. The challenger argued, among other things, that the city charter provision was invalid because it conflicted with a state constitutional provision that authorized the adoption of city charters under general laws and a statute that listed only citizenship and status as an elector as qualifications for election to a city council. The Court stated:

The only attack made by the relator upon the charter is that it purports to superadd certain qualifications necessary for elective officers to those imposed by the legislature. Assuming, for the sake of argument, that the language of the charter is to be interpreted as, in fact, imposing superadded qualifications, it does not follow that it contravenes the statute. Had the framers of the charter sought to lessen the requirements demanded by the statute, a different question would be presented, for then the charter would be in direct conflict with the statute. But that is not the case here. Section 9929 merely provides that no person shall be competent to hold office unless he possesses certain qualifications. It does not say that no other requirements shall be prescribed, nor does it say that the political subdivision therein named may not impose restrictions not inconsistent with the statute.

Id. at 623-24. In short, the Court held that the statute "fixes a minimum of qualification beyond which its political subdivisions may not go" and does not say that other qualifications may not be required. Id. This analysis was subsequently adopted by the Attorney General in responding to an inquiry regarding the ability of cities, towns and counties to impose term limits. AGO 1991 No. 22. Compare, *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998) (constitutional qualifications for state office exclusive).

This conclusion, that additional qualifications can be imposed by county charter, is consistent with basic principles that govern the activities of Washington charter counties. Generally speaking, the actions of home rule charter counties created under Article XI, Section 4, are valid so long as they do not contravene a statute or other provision of the state constitution. *King County Council v. Public Disclosure Comm'n*, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980). Charter counties thus "have legislative powers analogous to those of the state," except as expressly or impliedly limited by state law. AGO 2003 No. 11 at 3 (citing *Winkenwerder v. City of Yakima*, 52 Wn.2d 617,

622, 328 P.2d 873 (1958). See also *State ex rel. Carrol v. King County*, 78 Wn.2d 452, 474 P.2d 877 (1970) (upholding local election schedule).

It therefore appears, in answer to your first question, that the requirement of Charter Sec. 4.30 that officers be over the age of 21 at the time of appointment or election to office does not conflict with state laws providing for establishment of charter counties.

Your second question implicates a variety of state and federal constitutional principles that bear on the exercise of individual rights, including the rights of suffrage, equal protection of the laws, and right to travel. Because you have not asked for a comprehensive analysis of potential constitutional challenges, the following comments should be regarded as summary in nature. Additional or more focused analysis can be provided if needed by the Commission.

In Lawrence v. Issaquah, 84 Wn.2d 146, 524 P.2d 1347 (1974), the Washington Supreme Court heard an appeal seeking to compel the City of Issaquah, along with its Mayor and City Council, to seat the plaintiff as a Councilman after having been elected to that office. The City Council had resolved by oral motion that the plaintiff was ineligible for office for failure to comply with the one-year durational residency requirement applicable to noncharter code cities under RCW 35A.12.030. The appellant argued that the requirement, which called for residence in the city "for a period of at least one year next preceding his election," was unconstitutional for violation of his right to equal protection, in that it affords the right to hold office to others who have resided in the City for one year or more, and of his right to travel.

The court in Lawrence had little difficulty rejecting the appeal. Citing Sorenson v. Bellingham, 80 Wn.2d 547, 496 P.2d 512 (1972), and Dunn v. Blumstein, 405 U.S.

330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), two cases that invalidated requirements imposed on the right to vote, for the proposition that "a restriction placed upon a qualification for state office was unconstitutional, unless there was a compelling state interest" to support it, the majority held that the statutory one-year residency requirement was justified by a compelling state interest. That interest, articulated by the trial judge in Chimento v. Stark, 353 F. Supp. 1211 (D.N.H. 1973), aff'd, 414 U.S. 802, 94 S.Ct. 125,

38 L.Ed.2d 39 (1973), was quoted by the Court:

We conclude that the residency requirement of the New Hampshire Constitution does promote legitimate state interests. It ensures that the chief executive officer of New Hampshire is exposed to the problems, needs, and desires of the people whom he is to govern, and it also gives the people of New Hampshire a chance to observe him and gain firsthand knowledge about his habits and character. While the length of the residency requirement may approach the constitutional limit, it is not unreasonable in relation to its objective. It does not seriously impair the participation of the plaintiff in the election process and has only a negligible impact on the voters' right to have a meaningful choice of candidates for Governor. If the residency requirement for Governor is to be eliminated, it should be accomplished by the voters through the constitutional amending process. We hold, therefore, that Part Second, Article 42, of the New Hampshire Constitution is not violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Lawrence, supra at 150 (emphasis in original). Chimento involved a seven-year residency requirement for the office of Governor. Another New Hampshire case upheld a seven-year residency requirement for the office of state senator against a challenge premised on rights of both candidates and voters, Sununu v. Stark, 383 F. Supp. 1287

(D.N.H. 1974), aff'd, 420 U.S. 958, 95 S.Ct. 1346, 43 L.Ed.2d 435 (1975). Both cases were summarily affirmed by the United States Supreme Court.

In reaching its decision on the Supreme Court in Lawrence noted that residency requirements do not lend themselves to a one-size-fits-all approach:

We recognize from this holding that a residential requirement must be reasonable and that the same residential requirement for the office of city councilman of Issaquah as for the office of Governor in New Hampshire would be unreasonable and would exceed constitutional limitations. We are satisfied, however, that the residential requirement of 1 year for the office of city councilman, as in the instant case, is not an unreasonable limitation to fulfill the compelling state interest of affording the candidate for that office the opportunity to be exposed to the needs and problems of and the people of Issaquah, and at the same time to afford the people of Issaquah the opportunity to observe the candidate for city council and gain firsthand knowledge about his or her habits and character.

Lawrence, supra at 150.

The Washington Court of Appeals, Division Two, considered a challenge to the five-year durational residency requirement for the election of freeholders contained in Article XI, Section 4, of the state Constitution in Fischmaller v. Thurston County, 21 Wn. App. 280, 584 P.2d 483 (1978), review denied 91 Wn.2d 1013 (1979). That court applied the compelling state interest test "[s]olely for the purpose of this decision," but noted with approval that the concurring opinion in Lawrence had suggested that "the true constitutional test is not that of a *compelling* state interest, but rather of *legitimate* state interest." Id. at 287 (emphasis in original). The court found a compelling state interest based on the "highly significant" and independent responsibilities exercised by freeholders in fashioning the fundamental framework for a local government. The court also distinguished freeholders from other local officials whom it described as selected "within an existing framework of established laws and procedures, 'surrounded by legal checks and balances,' and 'having the aid of experienced staff people.'" Id. at 289.

On the other hand, there have been numerous cases in other jurisdictions where durational residency requirements for public office have not fared as well. This has generally followed in the wake of the seminal United States Supreme Court decision in Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct.2d 1322, 22 L.Ed.2d 600 (1969), which held that a one-year waiting period for public assistance denied equal protection because the reasons offered to justify it were either impermissible or failed to demonstrate a compelling state interest. Id. at 627. Since durational residency requirements inherently operate against persons who have recently exercised their right to travel, there have been challenges in other contexts as well, including public employment, bar admission, divorce, tuition fee differentials, publicly funded medical care, voter registration, and entitlement to Alaska's permanent fund dividends. See, e.g., Eggert v. Seattle, 81 Wn.2d 840, 505 P.2d 801 (1973) (voiding durational residency requirement for city employment). See generally 65 A.L.R. 3d 1048, 1053; Kalen, *Durational Residency Requirements and the Equal Protection Clause: Zobel v. Williams*, 25 Wash. U. J. Urb. & Contemp. L., 329 at 342-45.

As illustrated by Lawrence and Fischmaller, the outcomes of these cases depend on how the courts approach the standard of review and the reasons offered to justify the restrictions, and have varied widely. There have even been different results in federal and state courts on the same facts. In Robertson v. Bartels, 890 F. Supp.2d 519 (D.N.J. 2012), a federal District Court rejected as erroneous and an unlawful collateral attack a New Jersey Supreme Court decision that purported to uphold a one-year in-district residency requirement for election to the state legislature despite the longstanding existence of a federal injunction barring its enforcement. In doing so the District Court emphasized the individualized factual analysis required in this area:

Indeed, "[i]n assessing challenges to state election laws that restrict access to the ballot, [the Supreme Court] has not formulated a litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause." Clements v. Fashing, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) (quotation omitted). "Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions." Id. (citations omitted). Accordingly, "[t]he inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity." Id. at 964 (quotation omitted).

Id. at 527. The court went on to find that the reasons offered in support of the restrictions were unpersuasive, and distinguished the decisions upholding the seven-year restrictions in Chimento and Sununu as applicable only to high office, which it described as "the highest elective offices in the State of New Hampshire." Id. at 523.

In Pelozo v. Freas, 871 P.2d 687 (Alaska 1994), the Alaska Supreme Court invalidated a three-year residency requirement for election to the Kenai City Council. Although the case was decided using Alaska's "sliding scale" equal protection standard, which is typically more demanding than the rational basis standard applied in equal protection cases that do not employ strict scrutiny, the court noted that for local governments the cases seem to draw a line at one year:

We are inclined to consider problematic any period longer than one year. Other jurisdictions have generally viewed with skepticism duration residency requirements of longer than one year for local elections.

Id. at n. 8 (citations omitted).<sup>2</sup> The court went on to illustrate how cases in this area can boil down to a judgment call:

We are not persuaded that ensuring familiarity between the electorate and candidates in a local election is sufficiently compelling to outweigh the significant burden the charter provision places on the fundamental rights at stake. And the longer the candidate has been in the community, the weaker the means-end fit becomes. Three years is an unacceptably long time to burden the right of local voters to make their own decisions.

Id. at 689.

I trust the foregoing will be of assistance.

Sincerely,  
bertson

THR

<sup>2</sup> It has also been said that cases in this area have trended toward invalidation of requirements that apply at the local (as opposed to state) level particularly when adopted by local law; toward upholding durational requirements of one year or less; and toward disapproval of some of the traditionally substantially longer periods required." 65 A.L.R. Jd 1048 at 1054-55, 1061.

Documents: [QUALIFICATIONS.PDF](#)

8. 03/23/2016 - Snohomish County Charter Review Commission Sunset Provisions

SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-17	
<b>SUBJECT TITLE:</b> Require Sunset Provisions in County Ordinances	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-27 Require Sunset Provisions in County Ordinances. If

the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft

proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, the Commission decided to move forward with further analysis and discussion of Charter Amendment Proposal 2016-27 Require Sunset Provisions in County Ordinances. The proposal was initially proposed by Vice Chair Terwilliger.

In public policy, a sunset provision or clause is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

Currently, the Charter requires "ordinances which establish programs requiring funding shall provide for repeal on the date six years following enactment unless re-enacted prior to that date."

Questions for discussion:

- 1) Does the Commission want to require all ordinances to come with a sunset clause?
- 2) If yes, what agencies or programs should be included in the scope of the charter?
- 3) What is the appropriate termination schedule, if any, for the agencies, programs, or ordinance covered in the sunset legislation?

**BACKGROUND:**

**Theory and History of Sunset Provisions**

Sunset provisions typically include requirements that the legislation or board undergo a review conducted by staff or an outside auditor for the effectiveness of the legislation. Supporters of sunset clauses state that "process allows the legislature to eliminate agencies and laws that have outlived their usefulness and to make administrative and budgetary changes to those that still serve the public interest but have become bloated and inefficient."<sup>1</sup>

<sup>1</sup> Brian Baugus and Feler Boss, "Sunset Legislation in the States: Balancing the Legislative and the Executive," [HTTP://MERCATUS.ORG/SITES/DEFAULT/FILES/BAUGUS-SUNSET-LEGISLATION.PDF](http://MERCATUS.ORG/SITES/DEFAULT/FILES/BAUGUS-SUNSET-LEGISLATION.PDF)

Sunset provisions date to the early years of the American republic. Thomas Jefferson's belief in natural law led him to the conclusion that society could not create or enforce "perpetual law."<sup>2</sup> Section 6 of the Aliens Act and Section 6 of the Sedition Act of 1798 contained sunset clauses.<sup>3</sup>

In 1969, Theodore Lowi revived the idea of sunset provisions as a method of "sparking effective legislative oversight and possible reorganization of agencies that had grown too big for their britches."<sup>4</sup> The thought was to shift the burden of the continued existence of an agency onto the agency itself and improve legislative oversight, and ensure necessary regulation.<sup>5</sup> In 2010, at least sixteen states contained requirements in state law that all state agencies, boards, and commission expire after a certain number of years.<sup>6</sup>

A 2012 study on the use of sunset legislation concluded, "In practice, the elimination of a law or program is very seldom; more likely are modifications and consolidations, or the continuation of a program or law without amendment."<sup>7</sup> Another scholar, Emily Berman concluded that "sunsets fail to prompt meaningful reevaluation" of legislation.<sup>8</sup>

<sup>2</sup> Letter from Thomas Jefferson to James Madison 6 Sept. 1789 "On similar ground it may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please. But persons and property make the sum of the objects of government. The constitution and the laws of their predecessors extinguished them in their natural course with those who gave them being. This could preserve that being till it ceased to be itself, and no longer. Every constitution then, and every law, naturally expires at the end of 19 years." - online at [HTTP://PRESS-PUBS.UCHICAGO.EDU/FOUNDERS/DOCUMENTS/V1CH2S23.HTML](http://PRESS-PUBS.UCHICAGO.EDU/FOUNDERS/DOCUMENTS/V1CH2S23.HTML)

<sup>3</sup> "That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer." "An Act for the Punishment of Certain Crimes Against the United States." Approved July 14, 1798.

<sup>4</sup> Chris Mooney, "A Short History of Sunsets," *Legal Affairs*.

[HTTP://WWW.LEGALAFFAIRS.ORG/ISSUES/JANUARY-FEBRUARY-2004/STORY\\_MOONEY\\_JANFEB04.MSP](http://WWW.LEGALAFFAIRS.ORG/ISSUES/JANUARY-FEBRUARY-2004/STORY_MOONEY_JANFEB04.MSP)

<sup>5</sup> See "Sunset Legislation: Background Paper 77-1" at [HTTPS://WWW.LEG.STATE.NV.US/DIVISION/RESEARCH/PUBLICATIONS/BKGROUND/BP77-01.PDF](https://WWW.LEG.STATE.NV.US/DIVISION/RESEARCH/PUBLICATIONS/BKGROUND/BP77-01.PDF) as an example.

<sup>6</sup> [HTTP://KNOWLEDGECENTER.CSG.ORG/KC/SYSTEM/FILES/TABLE\\_3.27.PDF](http://KNOWLEDGECENTER.CSG.ORG/KC/SYSTEM/FILES/TABLE_3.27.PDF)

<sup>7</sup> Sylvia Velt and Bastian Jantz. 2012. "Sunset Legislation: Theoretical Reflections and International Experiences." *Better Business Regulation in a Risk Society*. 268.

<sup>8</sup> Emily Berman. 2013. "The Paradox of Counterterrorism Sunset Provisions." *Fordham LawReview*.

In some cases, scholars argue sunset clauses lead to legal uncertainty, chilling long-term investment, creating inefficiencies in the regulatory process, or frustrating the fundamental goals of a particular program.<sup>9</sup>

**State and Charter Requirements**

Under state law, the county must adopt new planning policies on a regular schedule, including the county's comprehensive plan and shoreline management plan.

The Charter requires the council to adopt a budget on either an annual or biennial basis. The Charter also requires ordinances which establish programs requiring funding to expire in six years.

**Effects of sunset provisions.**

Sunset provisions automatically repeal ordinances after a specific date unless the council renews the legislation. The effect may likely lead to increases in the council's workload. In 2015, the council passed 85 ordinances and passed 120 ordinances in 2014. In most cases ordinances adopted by the council modify existing legislation, rather than add new sections to the county code.

If the Commission wishes to move forward on this item, the staff recommends that the Commission's attorney conduct more research on the effect of sunset provisions and to determine whether there are conflicts with state law.

**ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

<sup>1</sup> Erin Dewey. 2007. "Sunset and You Better Take Care: Why Sunset Provisions Harm the Renewable Energy Industry and Violate Tax Principles." *Boston College LawReview*.

**Exhibit 1**  
**Snohomish County Charter**

**Section 2.115 Ordinances — Amendment, Repeal**

No ordinance shall be amended unless the proposed new ordinance sets forth each amended section at full length. The county council in repealing laws shall include in such proposed ordinance references to the law affected. All ordinances which establish programs requiring funding shall provide for repeal on the date six years following enactment unless re-enacted prior to that date.

Documents: [2016-17 SUNSET PROVISIONS.PDF](#)







**Snohomish County**  
**Charter Review Commission**  
Mill Creek City Hall, Council Chambers  
15728 Main St, Mill Creek, WA 98012  
Wednesday, March 23, 2016  
7:00 p.m. – 9:00 p.m.  
AGENDA

7:00 p.m. Call to Order

**Flag Salute**

**Roll Call**

**Agenda Order**

**Public Comments** (7:10 p.m.)

**Report from Chair**

**Business Items**

1. Charter Amendment Study Items
  1. Proposal 2016-12 Lower Age for Holding County Office from 21 to 18
  2. Proposal 2016-13 Reduce Residency Requirement for Holding County Office
  3. Proposal 2016-27 Require Sunset Provisions in Ordinances
  4. Proposal 2016-03 Abstentions by County Council Members

**Old Business**

**New Business**

9:00 p.m. Adjournment

*Next Meeting March 30 - Edmonds Public Safety Complex*

Agenda Topics

Charter Amendment Proposal 14 - Enlarge Council from 5 to 7 Members

Charter Amendment Proposal 7 - Non-Partisan Elections

Charter Amendment Proposal 16 - Eliminate Term Limits

*[NOTE: Times shown on Agenda are approximate]*

<b>SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-18</b>	
<b>SUBJECT TITLE:</b> Abstentions by County Council Members	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-15 Abstentions by County Council Members. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, Carolyn Weikel suggested the Commission consider requiring the County Council to vote on all matters unless there was a conflict of interest. On March 2, the Commission moved to have further discussion on the topic.

Every year since 2004, there are about 1-2 times a year a council member abstains on a vote for a motion or an ordinance.

To require a council member to vote, the Commission could amend either Charter sections 2.50 or 2.60 to include language about voting.

Question for Discussion:

Does the commission wish to require councilmembers to vote on all questions presented to the Council?

**BACKGROUND:**

The Snohomish County Code requires any council action to pass with three affirmative votes, unless a higher threshold is required by the charter or state law. The council uses Roberts Rules of Order as a guideline for how meetings proceed.

Roberts Rules of Order states “Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote.”

In California, courts have expressed the position “that the duty of members of a city council to vote and that they ought not “by inaction prevent action by the board.”” (*Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 520.), and the duty to vote is present if the member is present. (*Dry Creek Valley Assn., Inc. v. Bd. of Supervisors* (1977) 67 Cal.App.3d 839, 844.).

The effect of abstentions on the ordinance, motion, or resolution depends on the type of vote. An abstention can have the effect of supporting the majority’s position, undermining the majority’s position, or have no effect.<sup>1</sup>

Snohomish County Code 2.50 describes when council members should disclose conflicts of interest. 2.50.040 states “Any county elected or appointed official shall remove him or herself from hearing any quasi-judicial matter where, in the judgment of that official, his or her impartiality might be reasonably questioned.”

Use of Abstentions

Since 2004, a member of the council abstained from voting about once or twice per year as seen in Table 1.<sup>2</sup> Most abstentions occurred during the vote on motions, rather than ordinances, which amend county code.<sup>3</sup>

Table 1 - Abstentions by Councilmembers

Year	Motion	Ordinance	Other
2004	1	0	1
2005	1	0	0
2006	2	0	1
2007	3	0	0
2008	2	0	1
2009	3	0	0
2010	0	0	0
2011	0	0	0
2012	0	0	0
2013	0	0	4
2014	0	5	1

<sup>1</sup> For examples see <https://www.jurassicparliament.com/if-you-abstain-from-a-vote-what-happens/>.

<sup>2</sup> This table is based on the published Council Voting Records available at <http://snohomishcountywa.gov/936/Council-Voting-Records>. In at least one instance in 2014, the voting records do not appear to match the video proceedings of the Council. Ord 14-089 is listed as having four abstentions, but the video recording shows that the motion died for a lack of a second.

[http://snohomish.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4230&meta\\_id=261600](http://snohomish.granicus.com/MediaPlayer.php?view_id=2&clip_id=4230&meta_id=261600)

<sup>3</sup> The staff did not research whether a member explained their vote to abstain.

Table 1 - Abstentions by Councilmembers

Year	Motion	Ordinance	Other
2015	3	1	0

None of the other home rule counties contain a requirement in their charter for a member of the council to vote on every question.

If the Commission wishes to add language to the Charter, possible language may be “Every member of the council present shall vote on every question except when required to refrain from voting by state law.”

Question for Discussion:

Does the commission wish to require councilmembers to vote on all questions presented to the Council?

**ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

**Exhibit 1**  
**Snohomish County Charter**

**Section 2.50 Organization**

The county council shall annually elect one of its members as chair and one as vice-chair who shall act in the absence of the chair. The council shall be responsible for its own organization, the rules of conduct of its business and for the employment and supervision of such persons as it deems necessary to assist it in the performance of its duties. A majority of the council shall constitute a quorum at all meetings. Council action shall require at least a majority of the entire council except as provided by this charter or ordinance.

**Section 2.60 Rules of Procedure**

The county council shall enact by ordinance rules of procedure governing the time, place and conduct of its meetings and hearings and the introduction, publication, consideration and adoption of ordinances. The rules of procedure shall provide for public access to agendas, minutes and voting records of individual county council members. The rules of procedure shall also provide for an opportunity for public comment during any meeting of the county council. All meetings shall be open to the public except to the extent executive sessions are authorized by state law.

**SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-15**

<b>SUBJECT TITLE:</b> Lower Age for Holding County Office from 21 to 18	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter 2) Qualifications for Elective Office

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-12, Lower Age for Holding County Office from 21 to 18. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, the Commission decided to move forward with further analysis and discussion of Charter Amendment Proposal 2016-12, Lower Age for Holding County Office from 21 to 18. The proposal was initially proposed by Vice Chair Terwilliger.

A question was raised whether the requirements that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties. The Commission's attorney's short answer to this question is, "no, generally speaking, the actions of home rule charter counties are valid so long as they do not contravene a statute or other provision of the state constitution."

Lowering the age requirement to hold office would allow more people to run or be appointed to public office.

Question for Discussion:

Does the Commission wish to change the age for appointment or election for Snohomish County offices?

**BACKGROUND:**

A restriction of office holders in the Snohomish County Charter is that individuals must attain the age of 21 to serve. Supporters of reducing the age to 18 argue these provisions discriminate against younger politicians, and that a reduction would unleash a new wave of

youth activism.<sup>1</sup> In addition, supporters of removing age requirements for holding office rely on many of the same rationals for lowering the voting age to 18.<sup>2</sup>

At least one scholar argues that minimum age qualifications lead to a “more egalitarian environment for female political candidates.” Lauren Biksacky argues that “the Framers designed the minimum age qualifications to grow a republican society open to meritorious people of humble origins.” Since women traditionally enter elected politics later in life, Biksacky concludes that age qualifications “affirm the political equality of women political candidates.”<sup>3</sup>

## **State Law:**

### Eligibility for Election

The state law regarding eligibility for office is contained in RCW 42.04.020.

“no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.”

In order to be eligible as a voter, Article VI of the state Constitution states that all persons of the age of eighteen years of age and who lived in the precinct thirty days preceding the election are entitled to vote.

These provisions, taken together, require that candidates for elective office be at least 18 years old and have resided in the state, county, and precinct for at least 30 days. These requirements apply as a matter of law to counties whose charters do not specify additional limitations on holding office. Currently, the Snohomish County Charter contains three limitations, an office holder must be 21, live in the county for three years, and not served more than three consecutive full terms.

### Powers under a Home Rule Charter

Article XI, Section 4 of the state constitution allows counties to “frame a “Home Rule” charter for its own government subject to the Constitution and laws of this state.” The section goes on to state that home rule charters may “provide for such county officers as may

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<sup>1</sup> Osita Nwanvev. 2014. “The Right to Run: If you can vote, you should be able to run for public office—any office.” *Slate Magazine*. [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/10/age\\_of\\_candidacy\\_laws\\_should\\_be\\_abolished\\_why\\_18\\_year\\_olds\\_should\\_be\\_able.html](http://www.slate.com/articles/news_and_politics/politics/2014/10/age_of_candidacy_laws_should_be_abolished_why_18_year_olds_should_be_able.html)

<sup>2</sup> “In our country, eighteen- to thirty-four-year-olds can buy cigarettes, donate organs, play the lottery, drive cars, fly airplanes, shoot guns, start businesses, own homes, sign contracts, have consensual sex, get married, get divorced, have children, have abortions, join the military, serve as jurors, and be tried in court as full adults.” John Seery. 2012. *Too Young to Run: A Proposal for an Age Amendment to the U.S. Constitution*.

<sup>3</sup> Lauren Biksacky. 2014. “Favorite Sons (and Daughters): The Constitution’s Gender-Egalitarian Minimum Age Qualifications.” *Student Scholarship Papers*. [http://digitalcommons.law.yale.edu/student\\_papers/129/](http://digitalcommons.law.yale.edu/student_papers/129/)

be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation.”

In *State ex rel. Griffiths v. Superior Court* (1934), the Washington Supreme Court upheld a City of Seattle charter provision that barred Seattle City Council members from holding and other federal, state, county, or municipal office. The challenger argued, among other things, that the city charter provision was invalid because it conflicted with a state constitutional provision that authorized the adoption of city charters under general laws and a statute that listed only citizenship and status as an elector as qualifications for election to a city council. The Court concluded that the statute “fixes a **minimum of qualification** beyond which its political subdivisions may not go” and does not say that other qualifications may not be required (emphasis added).

The conclusion in *Griffiths* was used as a basis of multiple opinions from the Attorney General regarding the abilities of cities, towns, and counties to impose term limits<sup>4</sup> and regarding whether a state legislator must resign before they could hold municipal office.<sup>5</sup>

#### **Conclusions:**

The Commission is under no obligation under state law to change the Charter to allow 18, 19, or 20 year olds from holding public office.

If the Commission moves forward with amending the Charter, 18-20 year olds could run for public office, or be appointed to public office.

#### **ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

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<sup>4</sup> AGO 1991 No. 22

<sup>5</sup> <http://www.atg.wa.gov/ago-opinions/members-state-legislature-becoming-candidates-elective-positions-cities>

**Exhibit 1**  
**Snohomish County Charter**

**Section 4.30 Qualifications – Limitations**

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

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March 22, 2016

Snohomish County Charter Review Commission  
Attention: Chris Roberts  
3000 Rockefeller Avenue, M/S 507  
Everett, Washington 98201

Re: Qualifications for elective office

Dear Members of the Commission:

You have asked through staff for an expedited response to two questions concerning the qualifications for elective office contained in the current text of Snohomish County Charter Section 4.30. You have asked:

- (1) Whether the requirement that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties; and
- (2) Whether the requirement that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional.

Short answers

For the reasons stated below, your first question can be answered in the negative. In answer to your second question, numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient governmental interests can be identified to support them. Additional analysis can be provided if needed by the Commission.

Analysis

Charter Section 4.30 currently states, in its entirety:

**Section 4.30 Qualifications – Limitations**

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the

three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

The age and residency requirements of this section exceed those of most Washington charter counties. Charter counties other than King County require, either explicitly or through operation of law, that candidates for elective office be at least 18 years old. King County requires that candidates be 21 by the time of appointment or election. King County Charter, Sec. 630.<sup>1</sup> Our research has not revealed any other Washington charter county that imposes a three-year durational residency requirement for elective office.

Your request presents the threshold issue of whether state law dictates the qualifications for elective offices in counties that have adopted home rule charters. Article XI, Section 4, of the state Constitution provides for the creation of charter counties. That section states, in part, that “[a]ny county may frame a “Home Rule” charter for its own government subject to the Constitution and laws of this state...” (Emphasis added.) Eligibility for elective office is broadly addressed in RCW 42.04.020:

**Eligibility to hold office.**

That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.

The meaning of “elector” is provided by Article VI, Section 1. Under that section, “all persons of the age of eighteen years or older” who are citizens and “have lived in the state, county, and precinct for 30 days immediately preceding the election at which they offer to vote” are entitled to vote unless disqualified under Article VI, Section 3, which disqualifies certain persons who have been convicted of “infamous” crimes or declared incompetent.

These provisions, taken together, require that candidates for elective office be at least 18 years old and have resided in the state, county, and precinct for at least 30 days. These requirements apply as a matter of law to counties whose charters do not specify age or residency requirements.

In State ex rel. Griffiths v. Superior Court, 177 Wash. 619, 33 P.2d 94 (1934), the Washington Supreme Court upheld a City of Seattle charter provision that barred Seattle City Council members from holding any other federal, state, county, or municipal office. The challenger argued, among other things, that the city charter provision was invalid

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<sup>1</sup> A proposal to reduce the age to 18 was defeated in the general election held in November, 1997.

because it conflicted with a state constitutional provision that authorized the adoption of city charters under general laws and a statute that listed only citizenship and status as an elector as qualifications for election to a city council. The Court stated:

The only attack made by the relator upon the charter is that it purports to superadd certain qualifications necessary for elective officers to those imposed by the legislature. Assuming, for the sake of argument, that the language of the charter is to be interpreted as, in fact, imposing superadded qualifications, it does not follow that it contravenes the statute. Had the framers of the charter sought to lessen the requirements demanded by the statute, a different question would be presented, for then the charter would be in direct conflict with the statute. But that is not the case here. Section 9929 merely provides that no person shall be competent to hold office unless he possesses certain qualifications. It does not say that no other requirements shall be prescribed, nor does it say that the political subdivision therein named may not impose restrictions not inconsistent with the statute.

Id. at 623-24. In short, the Court held that the statute “fixes a minimum of qualification beyond which its political subdivisions may not go” and does not say that other qualifications may not be required. Id. This analysis was subsequently adopted by the Attorney General in responding to an inquiry regarding the ability of cities, towns and counties to impose term limits. AGO 1991 No. 22. Compare, Gerberding v. Munro, 134 Wn.2d 188, 949 P.2d 1366 (1998) (constitutional qualifications for state office exclusive).

This conclusion, that additional qualifications can be imposed by county charter, is consistent with basic principles that govern the activities of Washington charter counties. Generally speaking, the actions of home rule charter counties created under Article XI, Section 4, are valid so long as they do not contravene a statute or other provision of the state constitution. King County Council v. Public Disclosure Comm’n, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980). Charter counties thus “have legislative powers analogous to those of the state,” except as expressly or impliedly limited by state law. AGO 2003 No. 11 at 3 (citing Winkenwerder v. City of Yakima, 52 Wn.2d 617, 622, 328 P.2d 873 (1958)). See also State ex rel. Carrol v. King County, 78 Wn.2d 452, 474 P.2d 877 (1970) (upholding local election schedule).

It therefore appears, in answer to your first question, that the requirement of Charter Sec. 4.30 that officers be over the age of 21 at the time of appointment or election to office does not conflict with state laws providing for establishment of charter counties.

Your second question implicates a variety of state and federal constitutional principles that bear on the exercise of individual rights, including the rights of suffrage, equal protection of the laws, and right to travel. Because you have not asked for a comprehensive analysis of potential constitutional challenges, the following comments

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should be regarded as summary in nature. Additional or more focused analysis can be provided if needed by the Commission.

In Lawrence v. Issaquah, 84 Wn.2d 146, 524 P.2d 1347 (1974), the Washington Supreme Court heard an appeal seeking to compel the City of Issaquah, along with its Mayor and City Council, to seat the plaintiff as a Councilman after having been elected to that office. The City Council had resolved by oral motion that the plaintiff was ineligible for office for failure to comply with the one-year durational residency requirement applicable to noncharter code cities under RCW 35A.12.030. The appellant argued that the requirement, which called for residence in the city “for a period of at least one year next preceding his election,” was unconstitutional for violation of his right to equal protection, in that it affords the right to hold office to others who have resided in the City for one year or more, and of his right to travel.

The court in Lawrence had little difficulty rejecting the appeal. Citing Sorenson v. Bellingham, 80 Wn.2d 547, 496 P.2d 512 (1972), and Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), two cases that invalidated requirements imposed on the right to vote, for the proposition that “a restriction placed upon a qualification for state office was unconstitutional...unless there was a compelling state interest” to support it, the majority held that the statutory one-year residency requirement was justified by a compelling state interest. That interest, articulated by the trial judge in Chimento v. Stark, 353 F. Supp 1211 (D.N.H. 1973), aff’d, 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973), was quoted by the Court:

We conclude that the residency requirement of the New Hampshire Constitution does promote legitimate state interests. It ensures that the chief executive officer of New Hampshire is exposed to the problems, needs, and desires of the people whom he is to govern, and it also gives the people of New Hampshire a chance to observe him and gain firsthand knowledge about his habits and character. While the length of the residency requirement may approach the constitutional limit, it is not unreasonable in relation to its objective. It does not seriously impair the participation of the plaintiff in the election process and has only a negligible impact on the voters’ right to have a meaningful choice of candidates for Governor. If the residency requirement for Governor is to be eliminated, it should be accomplished by the *voters* through the constitutional amending process. We hold, therefore, that Part Second, Article 42, of the New Hampshire Constitution is not violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Lawrence, supra at 150 (emphasis in original). Chimento involved a seven-year residency requirement for the office of Governor. Another New Hampshire case upheld a seven-year residency requirement for the office of state senator against a challenge premised on rights of both candidates and voters, Sununu v. Stark, 383 F. Supp. 1287

(D.N.H. 1974), aff'd, 420 U.S. 958, 95 S.Ct. 1346, 43 L.Ed.2d 435 (1975). Both cases were summarily affirmed by the United States Supreme Court.

In reaching its decision the Supreme Court in Lawrence noted that residency requirements do not lend themselves to a one size fits all approach:

We recognize from this holding that a residential requirement must be reasonable and that the same residential requirement for the office of city councilman of Issaquah as for the office of Governor in New Hampshire would be unreasonable and would exceed constitutional limitations. We are satisfied, however, that the residential requirement of 1 year for the office of city councilman, as in the instant case, is not an unreasonable limitation to fulfill the compelling state interest of affording the candidate for that office the opportunity to be exposed to the needs and problems of the people of Issaquah, and at the same time to afford the people of Issaquah the opportunity to observe the candidate for city council and gain firsthand knowledge about his or her habits and character.

Lawrence, supra at 150.

The Washington Court of Appeals, Division Two, considered a challenge to the five-year durational residency requirement for the election of freeholders contained in Article XI, Section 4, of the state Constitution in Fischnaller v. Thurston County, 21 Wn. App. 280, 584 P.2d 483 (1978), review denied 91 Wn.2d 1013 (1979). That court applied the compelling state interest test “[s]olely for the purpose of this decision,” but noted with approval that the concurring opinion in Lawrence had suggested that “the true constitutional test is not that of a *compelling* state interest, but rather of *legitimate* state interest.” Id. at 287 (emphasis in original). The court found a compelling state interest based on the “highly significant” and independent responsibilities exercised by freeholders in fashioning the fundamental framework for a local government. The court also distinguished freeholders from other local officials whom it described as selected within an existing framework of established laws and procedures, “surrounded by legal checks and balances,” and “having the aid of experienced staff people.” Id. at 289.

On the other hand, there have been numerous cases in other jurisdictions where durational residency requirements for public office have not fared as well. This has generally followed in the wake of the seminal United States Supreme Court decision in Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct.2d 1322, 22 L.Ed.2d 600 (1969), which held that a one-year waiting period for public assistance denied equal protection because the reasons offered to justify it were either impermissible or failed to demonstrate a compelling state interest. Id. at 627. Since durational residency requirements inherently operate against persons who have recently exercised their right to travel, there have been challenges in other contexts as well, including public employment, bar admission, divorce, tuition fee differentials, publicly funded medical care, voter registration, and entitlement to Alaska’s permanent fund dividends. See, e.g., Eggert v. Seattle, 81 Wn.2d 840, 505 P.2d 801 (1973) (voiding durational residency requirement for city

employment). See generally 65 A.L.R. 3d 1048, 1053; Kalen, *Durational Residency Requirements and the Equal protection Clause: Zobel v. Williams*, 25 Wash. U. J. Urb. & Contemp. L. 329 at 342-45.

As illustrated by Lawrence and Fischnaller, the outcomes of these cases depend on how the courts approach the standard of review and the reasons offered to justify the restrictions, and have varied widely. There have even been different results in federal and state courts on the same facts. In Robertson v. Bartels, 890 F. Supp.2d 519 (D.N.J. 2012), a federal District Court rejected as erroneous and an unlawful collateral attack a New Jersey Supreme Court decision that purported to uphold a one-year in district residency requirement for election to the state legislature despite the longstanding existence of a federal injunction barring its enforcement. In doing so the District Court emphasized the individualized factual analysis required in this area:

Indeed, “[i]n assessing challenges to state election laws that restrict access to the ballot, [the Supreme Court] has not formulated a litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause.” Clements v. Fashing, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) (quotation omitted). “Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.” Id. (citations omitted). Accordingly, “[t]he inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity.” Id. at 964 (quotation omitted).

Id. at 527. The court went on to find that the reasons offered in support of the restrictions were unpersuasive, and distinguished the decisions upholding the seven-year restrictions in Chimento and Sununu as applicable only to high office, which it described as “the highest elective offices in the State of New Hampshire.” Id. at 523.

In Pelozza v. Freas, 871 P.2d 687 (Alaska 1994), the Alaska Supreme Court invalidated a three-year residency requirement for election to the Kenai City Council. Although the case was decided using Alaska’s “sliding scale” equal protection standard, which is typically more demanding than the rational basis standard applied in equal protection cases that do not employ strict scrutiny, the court noted that for local governments the cases seem to draw a line at one year:

We are inclined to consider problematic any period longer than one year. Other jurisdictions have generally viewed with skepticism duration residency requirements of longer than one year for local elections.

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Id. at n. 8 (citations omitted).<sup>2</sup> The court went on to illustrate how cases in this area can boil down to a judgment call:

We are not persuaded that ensuring familiarity between the electorate and candidates in a local election is sufficiently compelling to outweigh the significant burden the charter provision places on the fundamental rights at stake. And the longer the candidate has been in the community, the weaker the means-end fit becomes. Three years is an unacceptably long time to burden the right of local voters to make their own decisions.

Id. at 689.

I trust the foregoing will be of assistance.

Sincerely,



Thomas Herrick Robertson

THR

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<sup>2</sup> It has also been said that cases in this area have trended toward invalidation of requirements that apply at the local (as opposed to state) level, particularly when adopted by local law; toward upholding durational requirements of one year or less; and toward disapproval “of some of the traditionally substantially longer periods required.” 65 A.L.R. 3d 1048 at 1054-55, 1061.

<b>SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-16</b>	
<b>SUBJECT TITLE:</b> Reduce Residency Requirement for Holding County Office	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter 1) Qualifications for Elective Office

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-13 Reduce Residency requirement for Holding County Office. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, the Commission decided to move forward with further analysis and discussion of Charter Amendment Proposal 2016-13 Reduce Residency requirement for Holding County Office. The proposal was initially proposed by Vice Chair Terwilliger.

The Charter requires all office holders to be a resident of the County for three years “immediately prior to filing for or appointment to office.”

A question was raised whether the requirements that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional. The Commission’s attorney’s short answer to this question is that numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient government interests can be identified to support them.

Question for Discussion:

Does the Commission wish to change the residency requirement for appointment or election for Snohomish County offices?

**BACKGROUND:**

An abbreviated legal analysis on the question posed by Vice Chair Terwilliger is attached to this memo.

Supporters of residency requirements argues that office holders must be immersed in their community to represent it. Other arguments include the need for voters to have adequate time to assess the candidates, and prevent carpet bagging.<sup>1</sup>

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<sup>1</sup> Michael J. Pitts. 2016. “Against Residency Requirements.” *University of Chicago Legal Forum*. : <http://chicagounbound.uchicago.edu/uclf/vol2015/iss1/11>.

Opponents of residency requirements generally argue that residency requirements reduce the choice of voters. The U.S. Constitution does not contain district residency requirements for serving as a member of Congress.

King County requires all office holders to be 21.

**ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

**Exhibit 1**  
**Snohomish County Charter**

**Section 4.30 Qualifications – Limitations**

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

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March 22, 2016

Snohomish County Charter Review Commission  
Attention: Chris Roberts  
3000 Rockefeller Avenue, M/S 507  
Everett, Washington 98201

Re: Qualifications for elective office

Dear Members of the Commission:

You have asked through staff for an expedited response to two questions concerning the qualifications for elective office contained in the current text of Snohomish County Charter Section 4.30. You have asked:

- (1) Whether the requirement that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties; and
- (2) Whether the requirement that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional.

Short answers

For the reasons stated below, your first question can be answered in the negative. In answer to your second question, numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient governmental interests can be identified to support them. Additional analysis can be provided if needed by the Commission.

Analysis

Charter Section 4.30 currently states, in its entirety:

**Section 4.30 Qualifications – Limitations**

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the

three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

The age and residency requirements of this section exceed those of most Washington charter counties. Charter counties other than King County require, either explicitly or through operation of law, that candidates for elective office be at least 18 years old. King County requires that candidates be 21 by the time of appointment or election. King County Charter, Sec. 630.<sup>1</sup> Our research has not revealed any other Washington charter county that imposes a three-year durational residency requirement for elective office.

Your request presents the threshold issue of whether state law dictates the qualifications for elective offices in counties that have adopted home rule charters. Article XI, Section 4, of the state Constitution provides for the creation of charter counties. That section states, in part, that “[a]ny county may frame a “Home Rule” charter for its own government subject to the Constitution and laws of this state...” (Emphasis added.) Eligibility for elective office is broadly addressed in RCW 42.04.020:

**Eligibility to hold office.**

That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.

The meaning of “elector” is provided by Article VI, Section 1. Under that section, “all persons of the age of eighteen years or older” who are citizens and “have lived in the state, county, and precinct for 30 days immediately preceding the election at which they offer to vote” are entitled to vote unless disqualified under Article VI, Section 3, which disqualifies certain persons who have been convicted of “infamous” crimes or declared incompetent.

These provisions, taken together, require that candidates for elective office be at least 18 years old and have resided in the state, county, and precinct for at least 30 days. These requirements apply as a matter of law to counties whose charters do not specify age or residency requirements.

In State ex rel. Griffiths v. Superior Court, 177 Wash. 619, 33 P.2d 94 (1934), the Washington Supreme Court upheld a City of Seattle charter provision that barred Seattle City Council members from holding any other federal, state, county, or municipal office. The challenger argued, among other things, that the city charter provision was invalid

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because it conflicted with a state constitutional provision that authorized the adoption of city charters under general laws and a statute that listed only citizenship and status as an elector as qualifications for election to a city council. The Court stated:

The only attack made by the relator upon the charter is that it purports to superadd certain qualifications necessary for elective officers to those imposed by the legislature. Assuming, for the sake of argument, that the language of the charter is to be interpreted as, in fact, imposing superadded qualifications, it does not follow that it contravenes the statute. Had the framers of the charter sought to lessen the requirements demanded by the statute, a different question would be presented, for then the charter would be in direct conflict with the statute. But that is not the case here. Section 9929 merely provides that no person shall be competent to hold office unless he possesses certain qualifications. It does not say that no other requirements shall be prescribed, nor does it say that the political subdivision therein named may not impose restrictions not inconsistent with the statute.

Id. at 623-24. In short, the Court held that the statute “fixes a minimum of qualification beyond which its political subdivisions may not go” and does not say that other qualifications may not be required. Id. This analysis was subsequently adopted by the Attorney General in responding to an inquiry regarding the ability of cities, towns and counties to impose term limits. AGO 1991 No. 22. Compare, Gerberding v. Munro, 134 Wn.2d 188, 949 P.2d 1366 (1998) (constitutional qualifications for state office exclusive).

This conclusion, that additional qualifications can be imposed by county charter, is consistent with basic principles that govern the activities of Washington charter counties. Generally speaking, the actions of home rule charter counties created under Article XI, Section 4, are valid so long as they do not contravene a statute or other provision of the state constitution. King County Council v. Public Disclosure Comm’n, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980). Charter counties thus “have legislative powers analogous to those of the state,” except as expressly or impliedly limited by state law. AGO 2003 No. 11 at 3 (citing Winkenwerder v. City of Yakima, 52 Wn.2d 617, 622, 328 P.2d 873 (1958)). See also State ex rel. Carrol v. King County, 78 Wn.2d 452, 474 P.2d 877 (1970) (upholding local election schedule).

It therefore appears, in answer to your first question, that the requirement of Charter Sec. 4.30 that officers be over the age of 21 at the time of appointment or election to office does not conflict with state laws providing for establishment of charter counties.

Your second question implicates a variety of state and federal constitutional principles that bear on the exercise of individual rights, including the rights of suffrage, equal protection of the laws, and right to travel. Because you have not asked for a comprehensive analysis of potential constitutional challenges, the following comments

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should be regarded as summary in nature. Additional or more focused analysis can be provided if needed by the Commission.

In Lawrence v. Issaquah, 84 Wn.2d 146, 524 P.2d 1347 (1974), the Washington Supreme Court heard an appeal seeking to compel the City of Issaquah, along with its Mayor and City Council, to seat the plaintiff as a Councilman after having been elected to that office. The City Council had resolved by oral motion that the plaintiff was ineligible for office for failure to comply with the one-year durational residency requirement applicable to noncharter code cities under RCW 35A.12.030. The appellant argued that the requirement, which called for residence in the city “for a period of at least one year next preceding his election,” was unconstitutional for violation of his right to equal protection, in that it affords the right to hold office to others who have resided in the City for one year or more, and of his right to travel.

The court in Lawrence had little difficulty rejecting the appeal. Citing Sorenson v. Bellingham, 80 Wn.2d 547, 496 P.2d 512 (1972), and Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), two cases that invalidated requirements imposed on the right to vote, for the proposition that “a restriction placed upon a qualification for state office was unconstitutional...unless there was a compelling state interest” to support it, the majority held that the statutory one-year residency requirement was justified by a compelling state interest. That interest, articulated by the trial judge in Chimento v. Stark, 353 F. Supp 1211 (D.N.H. 1973), aff’d, 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973), was quoted by the Court:

We conclude that the residency requirement of the New Hampshire Constitution does promote legitimate state interests. It ensures that the chief executive officer of New Hampshire is exposed to the problems, needs, and desires of the people whom he is to govern, and it also gives the people of New Hampshire a chance to observe him and gain firsthand knowledge about his habits and character. While the length of the residency requirement may approach the constitutional limit, it is not unreasonable in relation to its objective. It does not seriously impair the participation of the plaintiff in the election process and has only a negligible impact on the voters’ right to have a meaningful choice of candidates for Governor. If the residency requirement for Governor is to be eliminated, it should be accomplished by the *voters* through the constitutional amending process. We hold, therefore, that Part Second, Article 42, of the New Hampshire Constitution is not violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Lawrence, supra at 150 (emphasis in original). Chimento involved a seven-year residency requirement for the office of Governor. Another New Hampshire case upheld a seven-year residency requirement for the office of state senator against a challenge premised on rights of both candidates and voters, Sununu v. Stark, 383 F. Supp. 1287

(D.N.H. 1974), aff'd, 420 U.S. 958, 95 S.Ct. 1346, 43 L.Ed.2d 435 (1975). Both cases were summarily affirmed by the United States Supreme Court.

In reaching its decision the Supreme Court in Lawrence noted that residency requirements do not lend themselves to a one size fits all approach:

We recognize from this holding that a residential requirement must be reasonable and that the same residential requirement for the office of city councilman of Issaquah as for the office of Governor in New Hampshire would be unreasonable and would exceed constitutional limitations. We are satisfied, however, that the residential requirement of 1 year for the office of city councilman, as in the instant case, is not an unreasonable limitation to fulfill the compelling state interest of affording the candidate for that office the opportunity to be exposed to the needs and problems of the people of Issaquah, and at the same time to afford the people of Issaquah the opportunity to observe the candidate for city council and gain firsthand knowledge about his or her habits and character.

Lawrence, supra at 150.

The Washington Court of Appeals, Division Two, considered a challenge to the five-year durational residency requirement for the election of freeholders contained in Article XI, Section 4, of the state Constitution in Fischnaller v. Thurston County, 21 Wn. App. 280, 584 P.2d 483 (1978), review denied 91 Wn.2d 1013 (1979). That court applied the compelling state interest test “[s]olely for the purpose of this decision,” but noted with approval that the concurring opinion in Lawrence had suggested that “the true constitutional test is not that of a *compelling* state interest, but rather of *legitimate* state interest.” Id. at 287 (emphasis in original). The court found a compelling state interest based on the “highly significant” and independent responsibilities exercised by freeholders in fashioning the fundamental framework for a local government. The court also distinguished freeholders from other local officials whom it described as selected within an existing framework of established laws and procedures, “surrounded by legal checks and balances,” and “having the aid of experienced staff people.” Id. at 289.

On the other hand, there have been numerous cases in other jurisdictions where durational residency requirements for public office have not fared as well. This has generally followed in the wake of the seminal United States Supreme Court decision in Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct.2d 1322, 22 L.Ed.2d 600 (1969), which held that a one-year waiting period for public assistance denied equal protection because the reasons offered to justify it were either impermissible or failed to demonstrate a compelling state interest. Id. at 627. Since durational residency requirements inherently operate against persons who have recently exercised their right to travel, there have been challenges in other contexts as well, including public employment, bar admission, divorce, tuition fee differentials, publicly funded medical care, voter registration, and entitlement to Alaska’s permanent fund dividends. See, e.g., Eggert v. Seattle, 81 Wn.2d 840, 505 P.2d 801 (1973) (voiding durational residency requirement for city

employment). See generally 65 A.L.R. 3d 1048, 1053; Kalen, *Durational Residency Requirements and the Equal protection Clause: Zobel v. Williams*, 25 Wash. U. J. Urb. & Contemp. L. 329 at 342-45.

As illustrated by Lawrence and Fischnaller, the outcomes of these cases depend on how the courts approach the standard of review and the reasons offered to justify the restrictions, and have varied widely. There have even been different results in federal and state courts on the same facts. In Robertson v. Bartels, 890 F. Supp.2d 519 (D.N.J. 2012), a federal District Court rejected as erroneous and an unlawful collateral attack a New Jersey Supreme Court decision that purported to uphold a one-year in district residency requirement for election to the state legislature despite the longstanding existence of a federal injunction barring its enforcement. In doing so the District Court emphasized the individualized factual analysis required in this area:

Indeed, “[i]n assessing challenges to state election laws that restrict access to the ballot, [the Supreme Court] has not formulated a litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause.” Clements v. Fashing, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) (quotation omitted). “Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.” Id. (citations omitted). Accordingly, “[t]he inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity.” Id. at 964 (quotation omitted).

Id. at 527. The court went on to find that the reasons offered in support of the restrictions were unpersuasive, and distinguished the decisions upholding the seven-year restrictions in Chimento and Sununu as applicable only to high office, which it described as “the highest elective offices in the State of New Hampshire.” Id. at 523.

In Peloza v. Freas, 871 P.2d 687 (Alaska 1994), the Alaska Supreme Court invalidated a three-year residency requirement for election to the Kenai City Council. Although the case was decided using Alaska’s “sliding scale” equal protection standard, which is typically more demanding than the rational basis standard applied in equal protection cases that do not employ strict scrutiny, the court noted that for local governments the cases seem to draw a line at one year:

We are inclined to consider problematic any period longer than one year. Other jurisdictions have generally viewed with skepticism duration residency requirements of longer than one year for local elections.

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Id. at n. 8 (citations omitted).<sup>2</sup> The court went on to illustrate how cases in this area can boil down to a judgment call:

We are not persuaded that ensuring familiarity between the electorate and candidates in a local election is sufficiently compelling to outweigh the significant burden the charter provision places on the fundamental rights at stake. And the longer the candidate has been in the community, the weaker the means-end fit becomes. Three years is an unacceptably long time to burden the right of local voters to make their own decisions.

Id. at 689.

I trust the foregoing will be of assistance.

Sincerely,



Thomas Herrick Robertson

THR

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<sup>2</sup> It has also been said that cases in this area have trended toward invalidation of requirements that apply at the local (as opposed to state) level, particularly when adopted by local law; toward upholding durational requirements of one year or less; and toward disapproval “of some of the traditionally substantially longer periods required.” 65 A.L.R. 3d 1048 at 1054-55, 1061.

Table 1

Number	Topic	Submitter	Charter Provision Addressed (if known)	Commission Action	Date	Date of Full Discussion	Ballot Proposal
2016-01	Move Animal Control to Sheriff's Office	Donald Murray	New Provision	Refer proposal to County Council	2/17/2016		
2016-02	Revisions to Districting Timeline and Procedures	County Auditor	Sections 4.50, 4.60 and 4.70.	Move for further discussion	2/17/2016	3/16/2016	
2016-03	Abstentions by County Council Members	Carolyn Weikel	Section 2.50 and 2.60	Move for further discussion	2/17/2016	3/23/2016	
2016-04	Adding Office of Ombudsman to Charter	Commissioner Koster	New Provision	Move for further discussion	2/17/2016	3/16/2016	
2016-05	Evaluate Process for Addressing Whistleblower Complaints	Commissioner Koster	Section 9.30	Move for further discussion	3/2/2016		
2016-06	Evaluate Process for Addressing Ethics Complaints	Commissioner Koster	Section 9.30	Move for further discussion	3/2/2016		
2016-07	Non-Partisan Elections for all County Offices	Commissioner O'Donnell	Section 4.15	Move for further discussion	3/2/2016	3/30/2016	
2016-08	Schedule of County Council Meetings	Commissioner Valentine	Section 2.60	Move for further discussion	3/16/2016	4/6/2016	
2016-09	Move Union Negotiations to County Council	Commissioner Terwilliger	Sections 2.20 and 3.20	Move for further discussion	3/2/2016	4/6/2016	
2016-10	Confirmation of Department Heads	Commissioner Terwilliger	Section 2.2	Move for further discussion	3/2/2016	4/6/2016	
2016-11	Clarify Duties and Powers of County Officers	Commissioner Terwilliger	Sections 3.20 and 3.110	Move for further discussion	3/2/2016	4/20/2016	
2016-12	Lower Age for Holding County Office from 21 to 18	Commissioner Terwilliger	Section 4.30	Move for further discussion	3/2/2016	3/23/2016	
2016-13	Reduce Residency Requirement for Holding County Office	Commissioner Terwilliger	Section 4.30	Move for further discussion	3/2/2016	3/23/2016	
2016-14	Enlarge Council from 5 to 7 Members	Commissioner Terwilliger	Section 2.30 (4.60, 4.70)	Move for further discussion	2/17/2016	3/30/2016	
2016-15	Eliminate Office of Performance Auditor	Commissioner Terwilliger	Section 2.150	Move for further discussion	2/17/2016	3/16/2016	
2016-16	Eliminate Term Limits	Commissioner Terwilliger	Section 4.30	Move for further discussion	3/2/2016	3/30/2016	
2016-17	Allow County Council to Declare an Elected Official's Position Vacant	Commissioner Terwilliger	Section 4.80	Withdrawn	3/2/2016		
2016-18	Change Date of Submission of Executive's Budget from October 1 to September 1	Commissioner Terwilliger	Section 6.20	Move for further discussion	3/2/2016	4/6/2016	
2016-19	Update Charter Language on Nondiscrimination	Commissioner Terwilliger	Section 9.05	Move for further discussion	3/2/2016		
2016-20	Update Charter Language on Transitional Provisions	Commissioner Terwilliger	Article 11	Move for further discussion	3/2/2016		
2016-21	Review Charter for Glaring Errors	Commissioner Matthews		Move for further discussion	3/2/2016		
2016-22	Require Biennial Budgets	Commissioner Koster	Section 6.05	Move for further discussion	2/17/2016	4/6/2016	
2016-23	Update Charter to use Gender-Neutral Terms	Commissioner Fior		Move for further discussion	3/2/2016	3/16/2016	
2016-24	Evaluate Governance Structure for Paine Field	Chair Gregerson	New Provision				
2016-25	Explore Concepts for Additional Representation in Unincorporated Areas	Commissioner Kelly	New Provision	Move for further discussion - Subcommittee Formed	3/16/2016	4/25/2016	
2016-26	Require Council to Repeal Ordinances with Adoption of New Ordinance	Commissioner Roulstone	Sections 2.110-2.2120	Withdrawn	3/2/2016		
2016-27	Require Sunset Provisions in Ordinances	Commissioner Terwilliger	Sections 2.110-2.2120	Move for further discussion	3/2/2016	3/23/2016	
2016-28	Make all Elected County Offices Partisan	Commissioner Barton	Section 4.15	Failed to garner five votes	3/2/2016		
2016-29	Public Financing for County Offices	Commissioner Liias	New Provision				
2016-30	Evaluate Status of Human Rights Commission	Commissioner Liias	New Provision				
2016-31	Require Appeals of Hearing Examiner to go to Superior Court	Commissioner Liias	New Provision				

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March 22, 2016

Snohomish County Charter Review Commission  
Attention: Chris Roberts  
3000 Rockefeller Avenue, M/S 507  
Everett, Washington 98201

Re: Qualifications for elective office

Dear Members of the Commission:

You have asked through staff for an expedited response to two questions concerning the qualifications for elective office contained in the current text of Snohomish County Charter Section 4.30. You have asked:

- (1) Whether the requirement that officers be over the age of 21 at the time of appointment or election to office conflicts with state laws providing for establishment of charter counties; and
- (2) Whether the requirement that officers be county residents for the three years immediately prior to filing for election or appointment to office is unconstitutional.

Short answers

For the reasons stated below, your first question can be answered in the negative. In answer to your second question, numerous cases from across the country have found durational residency requirements in the elections context to violate constitutional equal protection guarantees, particularly local candidacy requirements that exceed one year, but Washington cases suggest that such requirements will be upheld if sufficient governmental interests can be identified to support them. Additional analysis can be provided if needed by the Commission.

Analysis

Charter Section 4.30 currently states, in its entirety:

**Section 4.30 Qualifications – Limitations**

Each county official holding an elective office shall be, at the time of appointment or election and at all times while holding office, a citizen of the United States over the age of twenty-one, a county resident for the

three years immediately prior to filing for or appointment to office, and a registered voter of the county. No person shall be eligible to be elected to more than three consecutive full terms for any office. For the purposes of this section, different positions on the county council shall not be considered different offices.

The age and residency requirements of this section exceed those of most Washington charter counties. Charter counties other than King County require, either explicitly or through operation of law, that candidates for elective office be at least 18 years old. King County requires that candidates be 21 by the time of appointment or election. King County Charter, Sec. 630.<sup>1</sup> Our research has not revealed any other Washington charter county that imposes a three-year durational residency requirement for elective office.

Your request presents the threshold issue of whether state law dictates the qualifications for elective offices in counties that have adopted home rule charters. Article XI, Section 4, of the state Constitution provides for the creation of charter counties. That section states, in part, that “[a]ny county may frame a “Home Rule” charter for its own government subject to the Constitution and laws of this state...” (Emphasis added.) Eligibility for elective office is broadly addressed in RCW 42.04.020:

**Eligibility to hold office.**

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The meaning of “elector” is provided by Article VI, Section 1. Under that section, “all persons of the age of eighteen years or older” who are citizens and “have lived in the state, county, and precinct for 30 days immediately preceding the election at which they offer to vote” are entitled to vote unless disqualified under Article VI, Section 3, which disqualifies certain persons who have been convicted of “infamous” crimes or declared incompetent.

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Id. at 623-24. In short, the Court held that the statute “fixes a minimum of qualification beyond which its political subdivisions may not go” and does not say that other qualifications may not be required. Id. This analysis was subsequently adopted by the Attorney General in responding to an inquiry regarding the ability of cities, towns and counties to impose term limits. AGO 1991 No. 22. Compare, Gerberding v. Munro, 134 Wn.2d 188, 949 P.2d 1366 (1998) (constitutional qualifications for state office exclusive).

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It therefore appears, in answer to your first question, that the requirement of Charter Sec. 4.30 that officers be over the age of 21 at the time of appointment or election to office does not conflict with state laws providing for establishment of charter counties.

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employment). See generally 65 A.L.R. 3d 1048, 1053; Kalen, *Durational Residency Requirements and the Equal protection Clause: Zobel v. Williams*, 25 Wash. U. J. Urb. & Contemp. L. 329 at 342-45.

As illustrated by Lawrence and Fischnaller, the outcomes of these cases depend on how the courts approach the standard of review and the reasons offered to justify the restrictions, and have varied widely. There have even been different results in federal and state courts on the same facts. In Robertson v. Bartels, 890 F. Supp.2d 519 (D.N.J. 2012), a federal District Court rejected as erroneous and an unlawful collateral attack a New Jersey Supreme Court decision that purported to uphold a one-year in district residency requirement for election to the state legislature despite the longstanding existence of a federal injunction barring its enforcement. In doing so the District Court emphasized the individualized factual analysis required in this area:

Indeed, “[i]n assessing challenges to state election laws that restrict access to the ballot, [the Supreme Court] has not formulated a litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause.” Clements v. Fashing, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982) (quotation omitted). “Decision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.” Id. (citations omitted). Accordingly, “[t]he inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity.” Id. at 964 (quotation omitted).

Id. at 527. The court went on to find that the reasons offered in support of the restrictions were unpersuasive, and distinguished the decisions upholding the seven-year restrictions in Chimento and Sununu as applicable only to high office, which it described as “the highest elective offices in the State of New Hampshire.” Id. at 523.

In Peloza v. Freas, 871 P.2d 687 (Alaska 1994), the Alaska Supreme Court invalidated a three-year residency requirement for election to the Kenai City Council. Although the case was decided using Alaska’s “sliding scale” equal protection standard, which is typically more demanding than the rational basis standard applied in equal protection cases that do not employ strict scrutiny, the court noted that for local governments the cases seem to draw a line at one year:

We are inclined to consider problematic any period longer than one year. Other jurisdictions have generally viewed with skepticism duration residency requirements of longer than one year for local elections.

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Id. at n. 8 (citations omitted).<sup>2</sup> The court went on to illustrate how cases in this area can boil down to a judgment call:

We are not persuaded that ensuring familiarity between the electorate and candidates in a local election is sufficiently compelling to outweigh the significant burden the charter provision places on the fundamental rights at stake. And the longer the candidate has been in the community, the weaker the means-end fit becomes. Three years is an unacceptably long time to burden the right of local voters to make their own decisions.

Id. at 689.

I trust the foregoing will be of assistance.

Sincerely,



Thomas Herrick Robertson

THR

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<sup>2</sup> It has also been said that cases in this area have trended toward invalidation of requirements that apply at the local (as opposed to state) level, particularly when adopted by local law; toward upholding durational requirements of one year or less; and toward disapproval “of some of the traditionally substantially longer periods required.” 65 A.L.R. 3d 1048 at 1054-55, 1061.

<b>SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-17</b>	
<b>SUBJECT TITLE:</b> Require Sunset Provisions in County Ordinances	<b>Meeting Date:</b> March 23, 2016
<b>Estimated Presentation Time:</b> 20 minutes	<b>Exhibit:</b> 1) Snohomish County Charter

**RECOMMENDATION:** The Commission should discuss Charter Amendment Proposal 2016-27 Require Sunset Provisions in County Ordinances. If the Commission wishes to move forward with the proposal, the Commission should direct staff to prepare a draft proposition.

**SUMMARY:**

At the February 17, 2016 meeting of the Commission, the Commission decided to move forward with further analysis and discussion of Charter Amendment Proposal 2016-27 Require Sunset Provisions in County Ordinances. The proposal was initially proposed by Vice Chair Terwilliger.

In public policy, a sunset provision or clause is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

Currently, the Charter requires “ordinances which establish programs requiring funding shall provide for repeal on the date six years following enactment unless re-enacted prior to that date.”

Questions for discussion:

- 1) Does the Commission want to require all ordinances to come with a sunset clause?
- 2) If yes, what agencies or programs should be included in the scope of the charter?
- 3) What is the appropriate termination schedule, if any, for the agencies, programs, or ordinance covered in the sunset legislation?

**BACKGROUND:**

**Theory and History of Sunset Provisions**

Sunset provisions typically include requirements that the legislation or board undergo a review conducted by staff or an outside auditor for the effectiveness of the legislation. Supporters of sunset clauses state that “process allows the legislature to eliminate agencies and laws that have outlived their usefulness and to make administrative and budgetary changes to those that still serve the public interest but have become bloated and inefficient.”<sup>1</sup>

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<sup>1</sup> Brian Bagus and Feler Bose “Sunset Legislation in the States: Balancing the Legislative and the Executive.” <http://mercatus.org/sites/default/files/Baugus-Sunset-Legislation.pdf>

Sunset provisions date to the early years of the American republic. Thomas Jefferson's belief in natural law led him to the conclusion that society could not create or enforce "perpetual law."<sup>2</sup> Section 6 of the Aliens Act and Section 6 of the Sedition Act of 1798 contained sunset clauses.<sup>3</sup>

In 1969, Theodore Lowi revived the idea of sunset provisions as a method of "sparking effective legislative oversight and possible reorganization of agencies that had grown too big for their britches."<sup>4</sup> The thought was to shift the burden of the continued existence of an agency onto the agency itself and improve legislative oversight, and ensure necessary regulation.<sup>5</sup> In 2010, at least sixteen states contained requirements in state law that all state agencies, boards, and commission expire after a certain number of years.<sup>6</sup>

A 2012 study on the use of sunset legislation concluded, "in practice, the elimination of a law or program is very seldom; more likely are modifications and consolidations, or the continuation of a program or law without amendment."<sup>7</sup> Another scholar, Emily Berman concluded that "sunsets fail to prompt meaningful reevaluation" of legislation.<sup>8</sup>

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<sup>2</sup> Letter from Thomas Jefferson to James Madison 6 Sept. 1789 "On similar ground it may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation. They may manage it then, and what proceeds from it, as they please, during their usufruct. They are masters too of their own persons, and consequently may govern them as they please. But persons and property make the sum of the objects of government. The constitution and the laws of their predecessors extinguished then in their natural course with those who gave them being. This could preserve that being till it ceased to be itself, and no longer. Every constitution then, and every law, naturally expires at the end of 19 years." - online at <http://press-pubs.uchicago.edu/founders/documents/v1ch2s23.html>.

<sup>3</sup> "That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer:" "An Act for the Punishment of Certain Crimes Against the United States." Approved July 14, 1798.

<sup>4</sup> Chris Mooney. "A Short History of Sunsets." *Legal Affairs*.  
[http://www.legalaffairs.org/issues/January-February-2004/story\\_mooney\\_janfeb04.msp](http://www.legalaffairs.org/issues/January-February-2004/story_mooney_janfeb04.msp)

<sup>5</sup> See "Sunset Legislation: Background Paper 77-1" at <https://www.leg.state.nv.us/Division/Research/Publications/Bkground/BP77-01.pdf> as an example.

<sup>6</sup> [http://knowledgecenter.csg.org/kc/system/files/Table\\_3.27.pdf](http://knowledgecenter.csg.org/kc/system/files/Table_3.27.pdf)

<sup>7</sup> Sylvia Velt and Bastian Jantz. 2012. "Sunset Legislation: Theoretical Reflections and International Experiences. *Better Business Regulation in a Risk Society*. 268.

<sup>8</sup> Emily Berman. 2013. "The Paradox of Counterterrorism Sunset Provisions." *Fordham Law Review*.

In some cases, scholars argue sunset clauses lead to legal uncertainty, chilling long-term investment, creating inefficiencies in the regulatory process, or frustrating the fundamental goals of a particular program.<sup>9</sup>

### **State and Charter Requirements**

Under state law, the county must adopt new planning policies on a regular schedule, including the county's comprehensive plan and shoreline management plan.

The Charter requires the council to adopt a budget on either an annual or biennial basis. The Charter also requires ordinances which establish programs requiring funding to expire in six years.

### **Effects of sunset provisions.**

Sunset provisions automatically repeal ordinances after a specific date unless the council renews the legislation. The effect may likely lead to increases in the council's workload. In 2015, the council passed 85 ordinances and passed 120 ordinances in 2014. In most cases ordinances adopted by the council modify existing legislation, rather than add new sections to the county code.

If the Commission wishes to move forward on this item, the staff recommends that the Commission's attorney conduct more research on the effect of sunset provisions and to determine whether there are conflicts with state law.

### **ALTERNATIVES:**

The Commission add this item to a subsequent agenda for discussion.

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<sup>9</sup> Erin Dewey. 2007. "Sunset and You Better Take Care: Why Sunset Provisions Harm the Renewable Energy Industry and Violate Tax Principles." *Boston College Law Review*.

**Exhibit 1**  
**Snohomish County Charter**

**Section 2.115 Ordinances — Amendment, Repeal**

No ordinance shall be amended unless the proposed new ordinance sets forth each amended section at full length. The county council in repealing laws shall include in such proposed ordinance references to the law affected. All ordinances which establish programs requiring funding shall provide for repeal on the date six years following enactment unless re-enacted prior to that date.